

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA
MISC. LAND APPLICATION NO. 26 OF 2018**

**MUJENGI JOSEPHAT GWAO.....APPLICANT
VERSUS**

ABDALLAH A. GWAO.....RESPONDENT

(Arising from the Order of the High Court of Tanzania, Dodoma)

Dated 23th March, 2017

In

Land Appeal No. 64 of 2014

RULING

02nd November, 2022.

MDEMU, J:.

This is an application for extension of time. It is for hearing now after pleadings got completed, that is an affidavit and an affidavit in reply. On the resumption of hearing, learned counsel for the Applicant prayed to file a supplementary affidavit on what she observed as want of relevant facts in the affidavit.

Mr. Benda who represented the Respondent sought the proper remedy is to withdraw the matter, and in event the Applicant still possesses interest to pursue the same, then would have a proper application in place.

Having that position from the two learned counsels, the question is whether is legally acceptable to file a supplementary affidavit in circumstances where the pleadings are complete, that is the Respondent have also filed an affidavit in reply. In the case of **Judge (Rtd) Edward Anthony Mwesiumo & 7 Others vs. Joel Samumba, Misc. Civil Application No. 24 of 2022** (unreported) this Court made the following observation regarding prayer to file a supplementary affidavit:-

"In the instant application, the affidavit is silent as to whether notice of appeal was ever lodged. Mr. Nyangarika asked me to grant permission for him to file supplementary affidavit. This is odd"

Much as is not stated in that case, one would note that, affidavit is a sworn written evidence. At page 179 of the Black's law Dictionary 8th Edition and also in **Director of Public Prosecution (DPP) vs. Dodoli Kapufi and Patson Tusalele, Criminal Application No. 11 of 2008** (unreported), the question of affidavit being evidence is clearly amplified. The question now is whether there is a room for one to amend evidence.

In my considered opinion, it is not permissive to amend evidence in the form of amending an affidavit or filing a supplementary affidavit after the pleadings are complete as in this case, where the Respondent have filed an affidavit in reply and the application was now set for hearing.

As observed by Mr. Benda, the move of Ms. Lilian Kimaro to have a supplementary affidavit intends to amend the evidence. This is odd in law.

In consequence therefore, and going to the shoes of Ms. Lilian Kimaro, the supplementary affidavit intends to make the application properly before this Court. That means, the application is thus incompetent, and it is so declared, and is accordingly struck out. Each part to bear own costs.

It is so ordered.



Gerson J. Mdemu

JUDGE

02/11/2022

DATED at DODOMA this 02nd day of November, 2022



Gerson J. Mdemu

JUDGE

02/11/2022